444. And in *In re Thomas,* 39 N. Y. 171, the right of eminent domain was exerted against land in New York to maintain a canal in New Jersey because of the benefit to the people of New York, though the canal was situated entirely in New Jersey; this benefit, a mere possibility, was that the people of New York could use the canal, since it terminated on the Hudson river. On the other hand, in the *Grover Irrigation Co.* case, *supra,* although it was pointed out that certain cities in Wyoming would benefit from the resulting fertility of land in the neighborhood, the court considered this an indirect benefit and refused to allow the exercise of the eminent domain power for such purpose. Thus, it appears that the requirement of benefit may be applied from a strict or a liberal viewpoint. From a strict viewpoint, the dissenting judges in the principal case are correct and the majority are not in accord with the weight of authority, for the reciprocal statute is at best only an indirect benefit to Oregon. But a treatment of the problem liberally, from the standpoint of reasonableness and desirability, would be better. From such a standpoint the opinion of the majority is correct. In cases of irrigation and water-rights a view has been taken broader than that of the minority opinion. As long as Oregon, through its legislature, is willing to permit a foreign municipality to use its power of eminent domain, and the use of its land so acquired is a public one in the broad, liberal sense of the word, no citizen of Washington should be heard to object.

NUISANCE—AIDING BETTING ON RACES INDICTABLE.—D was indicted for the offense of maintaining a common and public nuisance. The evidence showed that he maintained a room in which he carried on a commission betting business. People would call him over the telephone and place bets with him on horse races; he received their bets and transmitted them to his father in New York, who would let him know if they were all right. They received money by check from D's father in New York or transmitted money to his New York office in case they lost the bet. There was no evidence of any disturbance or noise in or about the office of D, and his place of business was not known to the public generally. He was not indicted under the statute relating to betting on horse racing, but under the common law for a public nuisance. *Held,* he was guilty of maintaining a public nuisance by aiding betting in violation of law. *Enright* v. *Commonwealth* (Ky., 1920), 225 S. W. 240.

The decision is undoubtedly correct and follows the general rule. At common law any form of gambling was regarded as a nuisance because of its tendency to corrupt morals, disturb the community, and ruin fortunes, and it has been held that a pool room maintained to facilitate betting on horse races is a common law nuisance. *State* v. *Vaughn,* 81 Ark. 117; *State* v. *Ayers,* 49 Ore. 61. The decision in the principal case is based upon earlier Kentucky decisions. In *Ehrlick* v. *Commonwealth,* 125 Ky. 742, which was a prosecution for maintaining a common nuisance (a pool room), the court said: "A nuisance *per se* is any act or commission or use of property or thing which is of itself hurtful to the health, tranquility, or morals, or outrages the

decency of the community. It is not permissible or excusable under any circumstances." In *James* v. *State,* 4 Okla. Crim. Rep. 587, it is said that a house or place kept for the purpose of enabling persons to place bets or wagers upon horse races is a common gambling house, and is, therefore, a nuisance *per se.* See also *Jones* v. *State* (Okla.), 132 Pac. 319. In the *Ehrlick* case, *supra,* the court also held that where the thing is *per se* a nuisance, such as a pool room or gambling house, it is no defense that there was no noise or disturbance, nor that the community was not disturbed by its presence. This is supported by authority, *King* v. *People,* 83 N. Y. 587, where it was held that it was not an essential element of the offense of keeping a disorderly or gaming house that the public should be disturbed by the noise.

NUISANCE—ATTRACTIVE NUISANCE—NEITHER COFFER DAM NOR POND IS.—The Supreme Court of Iowa recently handed down two decisions on attractive nuisances. In the one case, a railroad maintained a coffer dam in support of one of the piers of its bridge. A beam extended entirely around the dam, and the plaintiff's intestate (eight years old) was drowned by the water within the dam by losing his balance in an attempt to walk the beam. In the other, the plaintiff's intestate (five years old) was drowned in a pond that was allowed by the railroad to remain undrained on its right of way. In both cases the plaintiff's right to recover was denied. *Massingham* v. *Illinois Central Ry. Co.* (Iowa, 1920), 170 N. W. 832; *Blough* v. *Chicago Great Western R. Co.* (Iowa, 1920), 179 N. W. 840.

The trend of the decisions points to a refusal by the courts to extend the rule of attractive nuisance advanced in the turntable cases. 2 COOLEY, TORTS [Ed. 3], 1272, n. 43. For cases representative of this tendency, see *Ryan* v. *Towan,* 128 Mich. 463 (water wheel); *Sullivan* v. *Boston & Albany R. Co.,* 156 Mass. 378 (charged wire on the roof of a shed); *Rogers* v. *Lees,* 140 Pa. St. 475 (hoisting apparatus); *Loftus* v. *Dehail,* 133 Cal. 214 (open cellar); *O'Connor* v. *Brucker,* 117 Ga. 475 (open door of a vacant house); *Arnold* v. *St. Louis,* 152 Mo. 173 (pond covered with ice). But see *Comer* v. *City of Winston-Salem* (N. C., 1919), 100 S. E. 619, 18 MICH. L. REV. 340, where the city was held liable for failure to maintain a proper railing on its bridge. See also *Ramsay* v. *Tuthill Building Material Co.* (Ill., 1920), 129 N. E. 127, which arose over the death of a child smothered by sand in a bin in which deceased was playing.

NUISANCE—FUNERAL HOME IN A RESIDENTIAL SECTION.—The defendants bought a house in an exclusive residential section and commenced to use it for the purpose of a funeral home in connection with their undertaking establishment, which was situated in another part of the city. They constructed a driveway entirely around the house for the purpose of parking funeral cars and carriages. The nature of the business required that bodies should be allowed to remain there from twenty-four to thirty-six hours. Services were held and funeral processions started from the home. The effect of the establishment was to impair materially the value of the sur-